

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of:</b>	)	
	)	
<b>Application by SBC Communications, Inc.,</b>	)	<b>WC Docket No. 02-306</b>
<b>Pacific Bell Telephone Company and</b>	)	
<b>Southwestern Bell Communications Services</b>	)	
<b>for Provision of In-Region,</b>	)	
<b>InterLATA Services in California</b>	)	
	)	
	)	
	)	

**To:   The Commission**

**COMMENTS**

**OF**

**PAGING SYSTEMS, INC. AND TOUCH TEL CORPORATION**

Paging Systems, Inc. ("PSI") and Touch Tel Corporation (together, the "Carriers"), pursuant to the Federal Communications Commission's ("FCC's" or "Commission's") Public Notice, DA-02-2333, released on September 20, 2002, in the above captioned proceeding and by their attorneys, submit these Comments on the Application of SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. (collectively "Pacific") for Authorization Under Section 271 of the Communications Act of 1934, as amended, ("Act")<sup>1</sup> to Provide In-Region, InterLATA Service in the State of California ("Application"), filed with the Commission on September 20, 2002.

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<sup>1</sup> 47 U.S.C. §151 et seq.

## **I. STATEMENT OF INTEREST**

The Carriers provide paging services through-out California and in Arizona, Nevada and Washington. In addition, PSI has recently acquired additional spectrum in Auction No. 40. To provide their services, they have interconnected their facilities with Pacific's public switched telephone network for many years. Accordingly, the Carriers have an interest in the present proceeding.

## **II. INTRODUCTION**

### **A. The Carriers' Concern**

In 1996, as the result of the passage of the Telecommunications Act of 1996,<sup>2</sup> the FCC released its Local Competition Order.<sup>3</sup> In 2000, after four years of challenges by the local exchange carriers ("LECs") over the issue, the FCC reiterated that, after the effective date of the Local Competition Order, "any LEC efforts to continue charging CMRS or other carrier for delivering such traffic would be unjust and unreasonable and violates the Commission's rules...."<sup>4</sup>

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<sup>2</sup> Public Law 104-104, 110 Stat. 56 (1996).

<sup>3</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 (1996)("Local Competition Order"), modified on recon., 11 FCC Rcd 13042 (1996) vacated in part, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8<sup>th</sup> Cir. 1997), aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999), decision on remand, Iowa Utils. Bd. v. FCC, 219 F.3d 744 (8<sup>th</sup> Cir. 2000), aff'd in part, rev'd in part sub nom. Verizon Communications Inc. v. FCC, 122 S. Ct. 1646 (2002).

<sup>4</sup> TSR Wireless, LLC, et al. v. U.S. West Communications, Inc., et al., Memorandum Opinion and Order, 15 FCC Rcd 11166, 11183 (2000)("TSR Wireless Order"), aff'd Qwest Corp., et. al. v. FCC, 252 F.3d 462 (D.C. Cir. 2001) ("Qwest").

In June of 2001, the U.S. Court of Appeals, District of Columbia Circuit ("Court"), affirmed Commission findings that LECs may not charge paging carriers for delivery of or for facilities used to deliver local telecommunications traffic or for DID numbers on a recurring basis; that LECs are obligated, pursuant to §251(b)(5) of the Act, to enter into reciprocal compensation arrangements with CMRS operators; and that §51.703(a) of the Commission's Rules means that "to the extent that local telecommunications traffic originates on the network facilities of one carrier and terminates on the facilities of another, compensation shall be paid to the terminating carrier."<sup>5</sup> In the TSR Wireless Order, the Commission rejected the LEC arguments that: because paging carriers do not provide switching and call termination, these carriers cannot be subject to reciprocal compensation; and those carriers that employ Type 1 interconnection must be excluded from the reciprocal compensation framework.<sup>6</sup> The Commission stated that a paging switch is not a traditional LEC switch but provides a terminating function; and that the definition of termination in §51.701(d) is broad enough to encompass Type 1 interconnection. Further, the Commission stated that paging companies should not be charged for delivery of LEC-originated traffic and for the associated facilities *even without* a section 252 interconnection agreement.<sup>7</sup>

Nevertheless, Pacific has continued to illegally charge the Carriers for both delivering traffic and associated facilities since 1996, even though it is clear from the FCC and Court rulings that Pacific should have reimbursed the Carriers any and all delivery and associated facility charges for the paging operations, to and including November 1, 1996 and October 7, 1996 for FCC Rule §§51.703 and 52.15, respectively

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<sup>5</sup> TSR Wireless Order at 11178.

<sup>6</sup> TSR Wireless Order at 11179-11180.

<sup>7</sup> TSR Wireless Order at 11183. Emphasis Added.

through August 24, 2000.<sup>8</sup> The Carriers had requested immediate reimbursement of the interconnection overcharges in 2000 and 2002. See Exhibit 2. Nevertheless, Pacific has continued to set up obstacles and delay in its responses to the Carriers.

Based on its experiences, the Carriers submit that Pacific does not meet the requirements of Item One of the Competitive Checklist (interconnection) since it has not provided the Carriers with interconnection "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory..."<sup>9</sup>

Further, since Pacific has refused to comply with the Telecommunications Act of 1996, Commission Orders and a Court ruling, it is not in the public interest for the Commission to grant Pacific's Application.

#### **B. Legal Standards**

Pacific cannot be authorized to provide in-region, InterLATA service under Section 271 in California unless it is able to demonstrate that:

1. It satisfies the requirements of Section 271(c)(1)(A) or Section 271(c)(1)(B);
2. it has implemented and is providing all of the items set forth in the competitive checklist;
3. the requested authorization will be carried out in accordance with Section 272; and
4. its entry is consistent with the public interest, convenience and necessity.<sup>10</sup>

A grant of Pacific's 271 Application without a demonstration of a history of compliance with all of the checklist items for all carriers and without fulfilling the public

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<sup>8</sup> The Carriers ceased paying the illegal charges on that date. Pacific then threatened to disconnect service. However, it later withdrew that threat and agreed to comply with the TSR Wireless Order. See Exhibit 1. It has not done so.

<sup>9</sup> 47 U.S.C. §251(c)(2)(D).

<sup>10</sup> 47 U.C. §271(d)(3).

interest test, would allow and encourage Pacific to continue to operate in an anti-competitive manner.

### III. DISCUSSION

#### A. **Pacific Fails to Comply With Checklist Item One:**

In enacting the competitive checklist, Congress recognized that unless an RBOC has fully complied with the 14-point competitive checklist codified in Section 271(c)(2)(B), competition in the local market will not occur.<sup>11</sup>

Further, in its evaluation of past Section 271 applications, the FCC has mandated that an RBOC demonstrate that it “is providing” each of the offerings enumerated in the competitive checklist, “at rates and on terms and conditions that comply with the Act.”<sup>12</sup> The FCC has clearly indicated that failure to comply with even a single checklist item constitutes independent grounds for denying an application for 271 authority.<sup>13</sup> Thus, strict compliance with each checklist requirement of Section 271 is necessary to ensure that sustainable competition will be realized in local markets.

Bearing in mind that the Commission has stated, and the Court has affirmed, that paging companies should not be charged for delivery of LEC-originated traffic and for

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<sup>11</sup> Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶18 (1997) (“Michigan Order”).

<sup>12</sup> Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina, Memorandum Opinion and Order, 13 FCC Rcd 539, ¶78 (1997)(“South Carolina Order”), aff’d, BellSouth Corp. v. FCC, 162 F.3d 678 (D.C. Cir. 1998) (citing Michigan Order, ¶110).

<sup>13</sup> Application by SBC Communications, Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in Texas, Memorandum Opinion and Order, 15 FCC Rcd 18354, ¶418 (2000)(“Texas Order”), and Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, 15 FCC Rcd 3953 (1999)(“New York Order”), aff’d, AT&T Corp. v. FCC, 220 F.3d 607, ¶424 (D.C. Cir. 2000).

the associated facilities even without a Section 252 interconnection agreement,<sup>14</sup> it is then clear that charging the Carriers for such interconnection services for the past six years violates the Communications Act of 1996; inhibits the development of competitive markets; and makes Pacific non-compliant with Checklist Item 1.

The Carriers submit that Pacific's willful refusal to provide them with interconnection under rates, terms and conditions that are just, reasonable and nondiscriminatory violates both Sections 271 and 251 of the 1996 Act.

Pacific attempts to establish at some length in its Application that it makes interconnection flexible and available to requesting carriers.<sup>15</sup> It also states that the pricing for interconnection is at rates set by the California PUC, pursuant to the Telecommunications Act of 1996. However, what it does not say is that it not only has illegally charged rates that are absolutely prohibited by the Telecommunications Act of 1996, but it withholds reimbursement for those overcharges; *and* it continues to charge for those services.

Thus, despite its contention that it satisfies the legal standard for Checklist Item 1, it is clear, based on the record and on the Carriers' experience, that Pacific has failed to meet this requirement. As a result, it has placed an undue and illegal financial burden on the Carriers, which directly affects competition in the marketplace.

In sum, interconnection with Pacific, therefore, has not been and is not just, reasonable and nondiscriminatory to the Carriers. Pacific has failed to meet one of its primary legal obligations under the Section 271 checklist.

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<sup>14</sup> TSR Wireless Order at 11183.

<sup>15</sup> Application at 14-21.

#### **IV. GRANT OF THE APPLICATION IS NOT IN THE PUBLIC INTEREST**

##### **A. Section 271(d)(3)(c) The Public Interest Test**

An RBOC must demonstrate that grant of its application will serve the public interest, convenience and necessity since the public interest analysis contained in Section 271(d)(3)(C) of the Telecom Act is an independent element from the 14-point checklist.<sup>16</sup>

As indicated by the FCC:

The public interest analysis is an independent element of the statutory checklist and, under normal canons of statutory construction, requires an independent determination. Thus, we view the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as congress expected. Among other things we may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of this application. Another factor that could be relevant to our analysis is whether we have sufficient assurance that markets will remain open after grant of the application.<sup>17</sup>

The FCC has indicated that all relevant factors are to be considered in the public interest analysis and has indicated a number of factors as being probative. These factors include: (a) performance monitoring with self

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<sup>16</sup> Texas Order ¶417; New York Order ¶423.

<sup>17</sup> Texas Order ¶416; New York Order ¶423.

executing enforcement mechanisms to ensure compliance; (b) optional payment plans for new entrant CLECs for the payment of non-recurring charges to lessen unreasonably high upfront costs; (c) whether all pro-competitive entry strategies are available to new entrants in different geographic regions in different scales of operation; (d) whether such strategies are available to other requesting carriers upon the same rates terms and conditions; (e) state and local laws that impact on competition; and (f) the existence of discriminatory or anti-competitive conduct on the part of the RBOC.<sup>18</sup>

Pacific, in its repudiation of the July 23rd Proposed Decision with respect to the public interest findings, seeks to deflect any Public Utilities Commission ("PUC") criticism of its conduct in the marketplace in California.<sup>19</sup> Instead it encourages the FCC to disregard the PUC concerns with the public interest and it downplays the public interest aspect of the 271 Application process, relying instead on broad statements concerning the effects of competition in local markets; and stating that it is subject to comprehensive performance reporting and monitoring requirements. Nevertheless, the statute and the FCC emphasize that public interest considerations are an integral part of the 271 Application proceedings. The Carriers' experience with Pacific has demonstrated to them that the public interest would not be served by a grant of the Application.

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<sup>18</sup> Michigan Order, ¶¶387, 391 and 393-397. (Emphasis Added.)

<sup>19</sup> Rulemaking on the Commission's Own Motion to Govern Open Access, R-93-04-033 (Cal. PUC July 23, 2002) ("July 23 Proposed Decision")

**B. Pacific's Conduct Should Not Be Condoned**

In reviewing previous Section 271 Applications, the Commission has said that even though

several commenters offer specific allegations that SWBT has engaged in anti-competitive behavior[, w]e have previously stated that we will not withhold section 271 authorization on the basis of isolated instances of allegedly unfair dealing or discrimination under the Act.<sup>20</sup>

However, the paragraph cited for Commission authority to disallow "isolated instances" refers only to whether *state or local governments* discriminate against new entrants in any way by favoring the incumbent. In such cases, the Commission states, "...we recognize that a BOC may not have the ability to eliminate such discriminatory or onerous regulatory requirements."<sup>21</sup>

More importantly, the Commission immediately followed the above referenced cited paragraph, with

We would be interested in evidence that a BOC applicant has...failed to comply with state and federal telecommunications regulations....Because the success of the marketing opening provisions of the 1996 Act depend, to a large extent, on the cooperation of the incumbent LECs, including BOCs...evidence that a BOC has engaged in a pattern of discriminatory conduct or disobeying federal and state telecommunications regulations would tend to undermine confidence that the BOC's local market is, or will remain, open to competition once the BOC has received interLATA authority.<sup>22</sup>

Pacific has charged and is charging the Carriers illegal rates -- rates which the Commission unequivocally stated were contrary to the Act. Further, Pacific has so far refused to reimburse any of this money. Pacific's actions and this history of imposing illegal rates have hampered the ability of the Carriers to compete in the marketplace.

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<sup>20</sup> Michigan Order, ¶396.

<sup>21</sup> Id.

<sup>22</sup> Michigan Order, ¶397.

Pacific would have the Commission believe that it has met all of its 271 obligations. The Carriers assert that this is not true. Pacific's pattern of delay in resolving the Carriers' issues indicates such an indifference to good faith compliance with the Act that the grant of its Application is simply not consistent with the public interest, convenience and necessity. The Commission should not disregard Pacific's disdain for Telecommunications Act of 1996, Commission Orders and a Court ruling. The public interest demands that the Commission address this matter.

**V. CONCLUSION**

The Carriers request that the Commission give serious consideration to their Comments in this proceeding. As discussed above, Pacific has violated the Telecommunications Act of 1996 and federal regulations. Under the present circumstances, it should not be rewarded by a grant of its Application.

Respectfully submitted,

**PAGING SYSTEMS, INC.  
TOUCH TEL CORPORATION**



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David L. Hill  
Audrey P. Rasmussen  
**ITS ATTORNEYS**

HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON, P.C.  
1120 20th Street, N.W., Suite 700, North Building  
Washington, D.C. 20036-3406  
Telephone (202) 973-1200  
Facsimile (202) 973-1212

Dated: October 9, 2002



PACIFIC BELL



NEVADA BELL



Payphone Service Center  
370 - 3<sup>rd</sup> Street, Room 411  
San Francisco, CA 94107

Attn: Jeff

Touch Tel Group

P.O. Box 4008

Buckingham CA 94011-4008

650-373-7900-420

\$ 349.62

Re: 650-612-0000-027

\$ 719.04

If you have sent payment today, we apologize for sending you this notice. As of 11/20  
our records show that your account all above is past due.

\$ 1068.66 AMOUNT DUE FOR BASIC SERVICE 11/29

If this amount has not been received or charges disputed, by 11/29, your service may be temporarily disconnected. If your basic service is temporarily disconnected, you will be required to pay a restoral charge of \$40.00 for each of your telephone lines (or applicable new service charges as noted below\*), a security deposit of \$ 36.00 and full payment of the outstanding balance to restore the service. 360.00

\$ 0 AMOUNT DUE FOR NON-BASIC SERVICE.

We will not disconnect your basic telephone service solely for non-payment of 900, 976, or 700 information services or other non-basic services such as voice mail, electronic mail, voice store or forward, fax store and forward, and inside wire installation. We reserve the right to remove or pursue other collection actions for any unpaid non-basic services. For further details, see the back of your bill.

IF YOU HAVE ANY QUESTIONS, PLEASE CALL 1-800-231-1863.

\$ 1068.66 TOTAL AMOUNT DUE. PLEASE PAY THIS AMOUNT BY 11/29

\*Note: Some types of business and/or residence service such as Remote Call Forwarding, circuits, coin mobile telephones and others, do not allow for temporary disconnection and will be permanently disconnected. If service is disconnected an order for new service will be required.

PSP Service Center

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FROM TOUCH TEL PAGING 243 8434

2-13-2002 11:12AM

230 West Haverhill Place, Room 141/777  
 Anaheim, California 92805

**PACIFIC BELL**  
 A Pacific Telecals Company

August 24, 2000

Touch Tel Corp.  
 Attn: Jeff Smith  
 3097 Moorpark Ave. (Ste 100)  
 San Jose, Calif. 92805

Dear Jeff:

I am writing in response to your inquiry concerning payments that Touch Tel Corporation has made under state tariffs for facilities used to deliver paging traffic to and to transport traffic within Pacific Bell's network.

In a recent order, the FCC has ruled that paging providers are not required to pay for the portion of facilities used to deliver traffic originated on the interconnecting LEC's network, despite the existence of state tariffs requiring such payment. However, the FCC has confirmed that paging providers are required to pay for all facilities used to transport traffic within the paging carrier's network, as well as those facilities used to deliver traffic not originated on the interconnecting LEC's network - so-called "transit traffic."

SBC believes that so long as a paging provider has not entered into an interconnection agreement under sections 251 and 252 of the Act, state tariffs continue to apply, and that the FCC's contrary ruling is in error. SBC will shortly file an appeal of the FCC's ruling. Until that appeal is resolved, Pacific Bell will continue to issue bills as required under state tariffs. However, pending appeal Pacific Bell will comply with the FCC's ruling and will not take any adverse action against a paging provider that fails to pay the portion of its bill attributable to charges for facilities used to deliver traffic originated on Pacific Bell's network. Paging providers remain responsible for all other charges.

At this time, the FCC has not yet resolved the question of what damages, if any, a paging provider is entitled to under the FCC's recent ruling. Until the parties' legal obligations are finally resolved, Pacific Bell is unable to determine what, if any, refund of prior payments is due to Touch Tel Corporation. In addition, and even assuming that Pacific Bell may be required to refund charges imposed for the facilities used to deliver traffic originated on Pacific Bell's network, Pacific Bell cannot determine which prior charges are attributable to such traffic.

However, Pacific Bell remains ready to enter into negotiations with paging providers pursuant to section 251 and 252 of the Telecommunications Act of 1996. As

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part of the 251/252 process, Pacific Bell expects that one topic of discussion will be an analysis of traffic volumes and network configurations in order to determine the parties' responsibility for the costs of interconnection facilities. Pacific Bell anticipates that such discussions may provide a basis for resolving the parties' retrospective, as well as prospective, obligations.

Accordingly, I invite Touch Tel Corporation to initiate interconnection discussions under the Act. To initiate such discussions, you may send a letter requesting the commencement of negotiations under sections 251 and 252 of the Telecommunications Act of 1996 for a paging interconnection agreement to Larry Cooper, SBC Telecommunications, Four Bell Plaza, Room 840, 311 S. Akard St., Dallas, TX 75202-5398. We look forward to receiving your request.

Very truly yours,



Pamala Gillette  
Wireless Billing Manager  
Pacific Bell Telephone Company

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**TOUCH TEL CORP.**  
PO Box 4008  
Burlingame, CA 94011-4008  
(650) 697-1800  
FAX (650) 347-7243

August 9, 2000

Mr. David Adams  
Wireless Negotiator  
SBC Communications, Inc.  
4 Bell Plaza  
Room 1810-02  
Dallas, TX 75202

Re: Touch Tel Corp.

Dear Mr. Adams:

This letter is being sent in connection with a recent Memorandum Opinion and Order, TSR Wireless, LLC, et al v. U.S. West Communications, Inc., et al., FCC 00-194 ("Order") which was released by the Federal Communications Commission ("FCC") on June 21, 2000.

Initially, a critical issue discussed in this Order is that although the Commission's Local Competition Order, 11 FCC Rcd 15499 (1996)<sup>1</sup> was appealed on various issues, no review was sought relating to the rules concerning LEC-CMRS interconnection. In the Order at page 9, the FCC cited Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979), for the proposition that a non-party in the Local Competition Order proceeding, can prevent a

<sup>1</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (Local Competition Order), *aff'd in part and vacated in part sub nom., Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded, AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999); Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 (rel. Aug. 18, 1997), *further recons. pending*.

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August 9, 2000  
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party to that proceeding from relitigating issues adversely decided in that proceeding, whether the argument was raised or not, as long as it could have been raised. The FCC also cited Yamaha Corp. v. U.S., 961 F.2d at 961, F.2d 245, 254 (D.C. Cir. 1992) in stating that the Eighth Circuit Court of Appeals ruling, Iowa Utilities Bd., 120 F.3d at 800 n.21, 820 n.39, prevents litigation even though that decision contains no detailed discussion of the merits of the rules. Thus, the doctrine of collateral estoppel precludes any challenges to the Commission's LEC-CMRS interconnection rules at this time.

As background to this Order, on March 3, 1997 and December 30, 1997, two Common Carrier Bureau Chiefs, respectively,<sup>2</sup> clarified Section 51.703(b) of the Commission's Rules. Specifically, the Keeney letter stated that all Commercial Mobile Radio Service providers, including paging carriers, provide telecommunications service and are therefore telecommunications providers within the meaning of the FCC rules and Regulations. Therefore, LECs are obligated to enter into reciprocal compensation arrangements for transport and termination of traffic with these providers. Further, Keeney stated that a LEC is prohibited by §51.703(b) from assessing charges on CMRS providers for local telecommunications traffic that originates on the LEC network. On December 30, 1997, Metzger found that a LEC may not charge paging carriers for LEC transmission facilities that are used on a dedicated basis to deliver local

<sup>2</sup> Letter from Regina M. Keeney, Chief, Common Carrier Bureau to Cathleen A. Massey, AT&T Wireless Services, Inc. (March 3, 1997) (Keeney Letter); Letter from A. Richard Metzger, Jr., Chief, Common Carrier Bureau to Keith Davis, Southwestern Bell Telephone, DA 97-2726 (Dec. 30, 1997) (Metzger Letter).

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telecommunications traffic that originates on the LEC's network to paging service providers.

The Order reaffirmed these two findings that LECs may not charge paging carriers for delivery of or for facilities used to deliver local telecommunications traffic or for DID numbers on a recurring basis. It reiterated that LECs are obligated, pursuant to §251(b)(5), to enter into reciprocal compensation arrangements with CMRS operators; and that §51.703(a) means that "to the extent that local telecommunications traffic originates on the network facilities of one carrier and terminates on the facilities of another, compensation shall be paid to the terminating carrier." Order at 13. Further, it rejected the LEC arguments that: because paging carriers do not provide switching and call termination, these carriers cannot be subject to reciprocal compensation; and those carriers that employ Type 1 interconnection must be excluded from the reciprocal compensation framework. Order at 14. The Commission stated that a paging switch is not a traditional LEC switch but provides a terminating function; and that the definition of termination in §51.701(d) is broad enough to encompass Type 1 interconnection. Finally, the Commission stated that paging companies should not be charged for delivery of LEC-originated traffic and for the associated facilities *even without a section 252 interconnection agreement*. Order at 18.

Citing its Local Competition Order, 11 FCC Rcd at 16016, the FCC reiterated that "[a]s of the effective date of this [Local Competition] order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge." Thus, the FCC stated

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that after the date of the Local Competition Order, "any LEC efforts to continue charging CMRS or other carrier for delivering such traffic would be unjust and unreasonable and violates the Commission's rules...." Order at 18. In addition, the FCC affirmed that LECs cannot charge for DID numbers or for Central Office (CO) "code opening." Order at 20-21.

It is quite clear that this Order requires, forthwith, the reimbursement of any and all delivery and facility charges for the paging operation of Touch Tel Corp., to and including November 1, 1996 and October 7, 1996 for FCC Rules 51.703 and 52.15, respectively. Accordingly we are requesting payment of the amounts due us.

If you have any questions on any of these issues, please contact us. We look forward to hearing from you in the near future.

Sincerely yours,



Jeff Smith

29618vl/mwd/AFK

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2-13-2002 11:15AM FROM TOUCH TEL PAGING 243 8434

**PAGING SYSTEMS, INC.**

PO Box 4249  
Burlingame, CA 94011-4249  
(650) 697-1000  
FAX (650) 347-7243

August 9, 2000

Mr. David Adams  
Wireless Negotiator  
SBC Communications, Inc.  
4 Bell Plaza  
Room 1810-02  
Dallas, TX 75202

Re: Paging Systems, Inc.

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telecommunications traffic that originates on the LEC's network to paging service providers.

The Order reaffirmed these two findings that LECs may not charge paging carriers for delivery of or for facilities used to deliver local telecommunications traffic or for DID numbers on a recurring basis. It reiterated that LECs are obligated, pursuant to §251(b)(5), to enter into reciprocal compensation arrangements with CMRS operators; and that §51.703(a) means that "to the extent that local telecommunications traffic originates on the network facilities of one carrier and terminates on the facilities of another, compensation shall be paid to the terminating carrier." Order at 13. Further, it rejected the LEC arguments that: because paging carriers do not provide switching and call termination, these carriers cannot be subject to reciprocal compensation; and those carriers that employ Type 1 interconnection must be excluded from the reciprocal compensation framework. Order at 14. The Commission stated that a paging switch is not a traditional LEC switch but provides a terminating function; and that the definition of termination in §51.701(d) is broad enough to encompass Type 1 interconnection. Finally, the Commission stated that paging companies should not be charged for delivery of LEC-originated traffic and for the associated facilities *even without a section 252 interconnection agreement*. Order at 18.

Citing its Local Competition Order, 11 FCC Rod at 16016, the FCC reiterated that "[a]s of the effective date of this [Local Competition] order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge." Thus, the FCC stated

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Mr. David Adams  
August 9, 2000  
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that after the date of the Local Competition Order, "any LEC efforts to continue charging CMRS or other carrier for delivering such traffic would be unjust and unreasonable and violates the Commission's rules..." Order at 18. In addition, the FCC affirmed that LECs cannot charge for DID numbers or for Central Office (CO) "code opening." Order at 20-21.

It is quite clear that this Order requires, forthwith, the reimbursement of any and all delivery and facility charges for the paging operation of Paging Systems, Inc., to and including November 1, 1996 and October 7, 1996 for FCC Rules 51.703 and 52.15, respectively. Accordingly we are requesting payment of the amounts due us.

If you have any questions on any of these issues, please contact us. We look forward to hearing from you in the near future.

Sincerely yours,



Jeff Smith

29618v1/mwd/APR

P. 19

2-13-2002 11:16AM FROM TOUCH TEL PAGING 243 8434

**EXHIBIT 2B**  
**FILE COPY**

**HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON**

A PROFESSIONAL CORPORATION

1120 20TH STREET, N.W.  
SUITE 700, NORTH BUILDING  
WASHINGTON, D.C.  
20036-3406

TELEPHONE (202) 973-1200  
FACSIMILE (202) 973-1212

<http://www.hallestill.com>

JOHN B. RUDOLPH\*  
JOSEPH R. MEMBRINO\*  
DONALD R. DINAN\*  
JOHN J. McDERMOTT\*  
JAMES B. WILCOX, JR.\*  
CRAIG A. KOENIGS\*  
JOHN J. CALLAHAN\*  
SANDEEP KATHURIA\*

**TULSA, OKLAHOMA**  
JAMES C. T. HARDWICK  
THOMAS D. GABLE  
THOMAS F. GOLDEN  
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FRANK M. HAGEDORN  
J. PATRICK CREMIN  
J. KEVIN HAYES  
MICHAEL D. GRAVES  
JAMES D. SATROM  
RICHARD A. GROENENDYKE, JR.  
GRAYDON D. LUTHEY, JR.  
DEL L. GUSTAFSON

**OF COUNSEL**  
JOHN S. ESTILL, JR.  
WILLIAM W. PRITCHARD  
DAVID L. HILL\*  
MARY JOHNSON TIDHOLM  
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AUDREY P. RASMUSSEN\*  
CLIVE A. SEYMOUR  
JANE L. ALLINGHAM

MARK K. BLONGEWICZ  
MICHAEL D. COOKE  
KENNETH L. HUNT  
B. KENNETH COX, JR.  
DONALD L. KAHL  
D. KENYON WILLIAMS, JR.  
THOMAS P. SCHROEDTER  
JAMES J. PROSZEK  
JAMES M. REED  
THOMAS A. CREEKMORE III  
STEPHEN W. RAY  
MARGARET A. SWIMMER  
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SUSAN L. GATES  
RONALD O. RAY, JR.  
KENNETH G. M. MATHER  
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FRED M. BURTON  
STEVEN A. BROUSSARD  
STEVEN W. SOULE  
MICHAEL L. NEMEC  
JOSEPH D. FINCHER  
ANGELYN L. DALE

**TULSA, OKLAHOMA OFFICE**  
320 SOUTH BOSTON AVENUE  
SUITE 400  
TULSA, OK 74103-3708  
TELEPHONE (918) 594-0400  
FACSIMILE (918) 594-0505

**OKLAHOMA CITY, OKLAHOMA OFFICE**  
100 NORTH BROADWAY  
BANK ONE CENTER, SUITE 2900  
OKLAHOMA CITY, OK 73102-8865  
TELEPHONE (405) 553-2828  
FACSIMILE (405) 553-2855

**NORTHWEST ARKANSAS OFFICE**  
ONE EAST CENTER STREET  
SUITE 315  
FAYETTEVILLE, AR 72701-5388  
TELEPHONE (501) 973-5200  
FACSIMILE (501) 973-0520

R. MARK PETRICH  
PAMELA H. GOLDBERG  
MARK BANNER  
ROBERT F. DOUGHERTY  
T. LANE WILSON  
BETSY G. JACKSON  
ROBERT P. FITZPATRICK  
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HEATHER R. CASE  
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T. GENE MONROE, II  
MONICA L. GOODMAN  
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MICHAEL J. LISSAU  
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KIMBERLY R. BIEDLER  
KERI G. WILLIAMS

DAVID J. SCHAFER  
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JOHN J. TREBILCOCK  
**NORTHWEST ARKANSAS**  
CURTIS HOGUE  
JAMES L. HARRIS

**OKLAHOMA CITY, OKLAHOMA**  
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ROBERT D. NELSON  
J. FRED GIST  
MICHAEL E. SMITH  
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DONNA N. BLAKLEY  
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KENT A. GILLILAND  
JON A. EPSTEIN  
ELAINE R. TURNER  
SUSANNA G. VOEGELI  
J. TODD WOOLERY  
\*ADMITTED IN D.C.

WALTER B. HALL (1923-1986)  
FRED S. NELSON (1928-1987)

February 20, 2002

Audrey P. Rasmussen  
(202) 973-1210  
[arasmussen@hallestill.com](mailto:arasmussen@hallestill.com)

**VIA FEDERAL EXPRESS**

David Adams  
Wireless Negotiator  
SBC Communications, Inc.  
4 Bell Plaza  
Room 1810-02  
Dallas, TX 75202

Re: Paging Systems, Inc.

Dear Mr. Adams:

Paging Systems, Inc. ("PSI"), by its attorneys, is sending this letter as a follow-up to our previous correspondence of August 9, 2000 regarding Southwestern Bell's transport and termination charges which have been assessed on PSI since 1996 in violation of the Communications Act of 1934, as amended, by the Telecommunications Act of 1996 (the "Act") and the Federal Communications Commission's Rules and Orders. PSI has continued to pay its invoices, although it understands that a number of paging carriers have not paid the contested charges. We are requesting reimbursement and/or credits for these payments since the litigation before the U.S. Court of Appeals discussed below has ended as of June 15, 2001.

We are requesting a dialogue with Southwestern Bell regarding these charges, pursuant to *TSR Wireless, LLC, et al. v. U.S. West Communications, Inc., et al., Memorandum Opinion and Order*, 15 FCC Rcd 11166 (2000) ("TSR Wireless Order"), aff'd *Qwest Corp., et al. v. FCC*, No. 00-1377 (D.C. Cir. June 15, 2001) ("Qwest").

In brief, Quest resulted from letters, dated March 3, 1997 and December 30, 1997, in which two Common Carrier Bureau Chiefs,<sup>1</sup> clarified §51.703(b) of the Commission's Rules. The Keeney letter stated that all Commercial Mobil Radio Service ("CMRS") providers, including paging carriers, provide telecommunications service and thus are telecommunications providers within the meaning of the FCC Rules and Regulations; therefore, LECs are obligated to enter in to reciprocal compensation arrangements for transport and termination of traffic with these providers. Keeney also stated that a LEC is prohibited by §51.703(b) from assessing charges on CMRS providers for local telecommunications traffic that originates on the LEC network. On December 30, 1997, Metzger found that a LEC may not charge paging carriers for LEC transmission facilities that are used on a dedicated basis to deliver local telecommunications traffic that originates on the LEC's network to paging service providers.

The TSR Wireless Order reaffirmed these two findings that LECs may not charge paging carriers for delivery of or for facilities used to deliver local telecommunications traffic or for DID numbers on a recurring basis. It reiterated that LECs are obligated, pursuant to §251(b)(5), to enter into reciprocal compensation arrangements with CMRS operators; and that §51.703(a) means that "to the extent that local telecommunications traffic originates on the network facilities of one carrier and terminates on the facilities of another, compensation shall be paid to the terminating carrier." Order at 11178. Additionally, it rejected the LEC arguments that: because paging carriers do not provide switching and call termination, these carriers cannot be subject to reciprocal compensation; and those carriers that employ Type 1 interconnection must be excluded from the reciprocal compensation framework. Order at 11179-11180. The Commission stated that a paging switch is not a traditional LEC switch but provides a terminating function; and that the definition of termination in §51.70(d) is broad enough to encompass Type 1 interconnection. Further, the Commission stated that paging companies should not be charged for delivery of LEC-originated traffic and for the associated facilities even without a section 252 interconnection agreement. Order at 11183.

Citing its Local Competition Order, 11 FCC Rcd at 16016,<sup>2</sup> the FCC reiterated that "[a]s of the effective date of this [Local Competition] order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge." The FCC stated that after the date of the Local Competition Order, "any LEC efforts to continue charging CMRS or other carrier for delivering such traffic would be unjust and unreasonable and violates the Commission's rules...." Order at 11183. In addition, the FCC affirmed that LECs cannot charge for DID

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<sup>1</sup> Letter from Regina M. Kenney, Chief, Common Carrier Bureau to Cathleen A. Massey, AT&T Wireless Services, Inc. (March 3, 1997) (Kenney Letter); letter from A. Richard Metzger, Jr., Chief, Common Carrier Bureau to Keith Davis, Southwestern Bell Telephone, DA 97-2726 (Dec. 30, 1997)(Metzger Letter).

<sup>2</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom., Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8<sup>th</sup> Cir. 1997) and *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8<sup>th</sup> Cir. 1997), *aff'd in part and remanded, AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct 721 (1999).

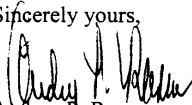
David Adams  
February 20, 2002  
Page 3

numbers or for Central Office (CO) "code opening." Order at 11185-11186. The U.S. Court of Appeals, D.C. Circuit affirmed the FCC's substantive interpretation of §51.703(b) in June, 2001.

It is quite clear therefore that reimbursement of any and all delivery and facility charges for the paging operation of PSI, to and including November 1, 1996 and October 7, 1996 for FCC Rules 51.703 and 52.15, respectively.

If you have any questions in connection with this matter, please contact me. We look forward to discussing and hopefully resolving this matter in the near future.

Sincerely yours,



Audrey R. Rasmussen

APR:gln

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FILE COPY

JOHN B. RUDOLPH\*  
JOSEPH R. MEMBRINO\*  
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320 SOUTH BOSTON AVENUE  
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TULSA, OK 74103-3708  
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A PROFESSIONAL CORPORATION

1120 20TH STREET, N.W.  
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**OKLAHOMA CITY, OKLAHOMA OFFICE**  
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**NORTHWEST ARKANSAS OFFICE**  
ONE EAST CENTER STREET  
SUITE 315  
FAYETTEVILLE, AR 72701-5388  
TELEPHONE: (501) 973-5200  
FACSIMILE: (501) 973-0520

DAVID J. SCHAFER  
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JOHN J. TREBILCOCK

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\*ADMITTED IN D.C.

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February 20, 2002

Audrey P. Rasmussen  
(202) 973-1210  
[arasmussen@hallestill.com](mailto:arasmussen@hallestill.com)

## VIA FEDERAL EXPRESS

David Adams  
Wireless Negotiator  
SBC Communications, Inc.  
4 Bell Plaza  
Room 1810-02  
Dallas, TX 75202

Re: Touch Tel Corp.

Dear Mr. Adams:

Touch Tel Corp. ("Touch Tel"), by its attorneys, is sending this letter as a follow-up to our previous correspondence of August 9, 2000 regarding Southwestern Bell's transport and termination charges which have been assessed on Touch Tel since 1996 in violation of the Communications Act of 1934, as amended, by the Telecommunications Act of 1996 (the "Act") and the Federal Communications Commission's Rules and Orders. Touch Tel has continued to pay its invoices, although it understands that a number of carriers have not paid the contested charges. We are requesting reimbursement and/or credits for these payments since the litigation before the U.S. Court of Appeals discussed below has ended as of June 15, 2001.

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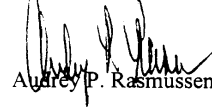
David Adams  
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Page 3

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If you have any questions in connection with this matter, please contact me. We look forward to discussing and hopefully resolving this matter in the near future.

Sincerely yours,



Audrey P. Rasmussen

APR:gln

39684.1:710113.00600

## **CERTIFICATE OF SERVICE**

I, Gladys L. Nichols, do hereby certify that on this 9th day of October 2002, a true and correct copy of the foregoing **COMMENTS OF PAGING SYSTEMS, INC.** was sent via e-mail, as indicated, or by U.S. Mail, with proper postage thereon fully paid, to:

\* Tracey Wilson  
Competition Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 5-C437  
Washington, D.C. 20554  
**e-mail: twilson@fcc.gov**

\*\* Phyllis White  
California Public Utilities Commission  
Telecommunications Division  
505 Van Ness Avenue  
San Francisco, CA 94102  
**e-mail: prw@cpuc.ca.gov**

\*\*Brienne Kucerik  
U.S. Department of Justice  
Antitrust Division  
Telecommunications and Media  
Enforcement  
1401 H Street, N.W., Suite 8000  
Washington, D.C. 20530  
**e-mail: brianne.kucerik@usdoj.gov**

\*\*\*Jonathan Rabkin, Esq.  
Kellogg, Huber, Hansen, Todd &  
Evans  
1615 K Street, N.W.  
Suite 400  
Washington, D.C. 20036-3209

**\*\*e-mail: rcritten@fcc.gov**

\*\* Qualex International  
Portals II  
445 12<sup>th</sup> Street, S.W.  
Room CY-B402  
Washington, D.C. 20554  
**e-mail: qualexint@aol.com**

/s/Gladys L. Nichols  
Gladys L. Nichols

\* Via e-mail and First-Class Mail  
\*\* Via e-mail only  
\*\*\* Via First-Class Mail only